

MASTER SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT is made and entered into this ____ day of _____, 200____ (the "Effective Date"), by and between XO Communications Services, Inc., a Delaware corporation, on behalf of itself and its operating affiliates (collectively referred to hereinafter as "XO"), whose principal place of business is located at 11111 Sunset Hills Road, Reston, VA 20190 and Shelby County Government hereinafter referred to as "Customer"), whose place of business is located at 160 N. Main, Rm 550, Memphis, TN 38103. Customer and XO are collectively referred to herein as the "Parties."

Preliminary Statement

Customer and XO hereby enter into this Agreement to enable Customer to obtain telecommunications services from XO. The Services will be offered in each area to the Customer by an entity ("Authorized Entity"), which is an Affiliate of XO. The terms and conditions of this Agreement are, and shall be, applicable to the Services provided to the Customer by each Authorized Entity.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties hereby mutually agree as follows:

ARTICLE 1 – DEFINITIONS/SERVICE OFFERINGS

1.1 The capitalized terms used in this Agreement shall have their normal or common meaning, the meaning given them in the Tariffs, or the meaning as defined in the text hereof, except that the following terms shall have the following meanings for the purpose of this Agreement:

(a) **Access Service Request (ASR)**. "Access Service Request" or "ASR" shall mean the capacity order for certain Services which delineates the type of Service, quantity of Circuits, location served, Point of Termination, protocols, Circuit term, requested Start of Service Date and other information necessary for XO to provide Service to the Customer. A copy of the pre-approved ASR is attached hereto as Exhibit A and incorporated herein by reference. Any ASR which does not mirror Exhibit A is prohibited and the any terms contained therein void.

(b) **Affiliate**. "Affiliate" shall mean, with respect to either Party, any other party which controls, is controlled by, or is under common control with such Party. For purposes hereof, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any such party whether through the ownership of voting securities, by contract, or otherwise.

(c) **Agreement**. "Agreement" shall mean this Master Services Agreement, including any schedules, appendices, Exhibits, Tariffs, and documents attached hereto and made a part hereof, or incorporated herein by reference as well as any written amendments to this

Agreement which have been signed by the authorized representatives of the Parties.

(d) **Circuit**. "Circuit" shall mean an individual telecommunications facility included as part of a Service.

(e) **Emergency Maintenance**. "Emergency Maintenance" shall mean maintenance which, if not accomplished promptly by XO, could result in a serious degradation or loss of Service to the Customer or the End User or damage to XO's Network or its customers.

(f) **End User**. "End User" shall mean a user to whom Customer will provide telecommunications services utilizing, in part, the Services provided by XO to Customer under this Agreement.

(g) **Exhibit**. "Exhibit" shall mean an attachment to this Agreement for a particular Service, including any schedules and attachments thereto, which contains the product description, pricing, and terms and conditions associated with that specific Service.

(h) **Network**. "Network" shall mean the telecommunications network of one of the Parties, as the context of the provision requires or as contemplated under this Agreement.

(i) **Off-Net Services**. "Off-Net Services" are those where one or both locations to be connected are not served by XO's Network and therefore a portion of the Services is provided by another service provider. Where XO is able to provide Off-Net Services, the terms, conditions and pricing of such Service will be provided on an individual case basis ("ICB") subject to the terms and conditions of the underlying service provider. XO shall invoice Customer for Off-Net Services rendered and shall manage ordering pursuant to the applicable Exhibit, but XO shall not be liable for any failures on the part of the underlying service provider.

(j) **On-Net Services**. "On-Net Services" shall mean those Services which connect two (2) locations served by XO's Network. On-Net Services are provided entirely by XO.

(k) **Planned Service Outage**. "Planned Service Outage" shall mean any Service Outage caused by scheduled maintenance or planned enhancements or upgrades to the XO Network as described in the applicable Service exhibits.

(l) **Point of Presence (POP)**. "Point of Presence" or "POP" shall mean a specific location within a Local Access Transport Area (LATA) where service terminates and/or originates.

(m) **Point of Termination**. "Point of Termination" shall mean the point at which XO's responsibility to provide equipment and service ends and where Customer's or Customer's End User's responsibilities begin, identified as the interface between XO and Customer at Customer's Point of Presence, the local exchange carrier's central

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office, a long-distance carrier's Point of Presence or End-User sites identified on the ASR. The Service will include any entrance cable or drop wire from the XO Network terminating at XO's distribution panel (DSX) which is generally located in the basement of Customer's building or where XO's outside plant terminates. Any other internal wiring to Customer's floor or suite is the sole responsibility of Customer unless otherwise expressly agreed in writing by the Parties.

(n) **Premises.** "Premises" shall mean the address to which Service is provided or delivered, identified as a Point of Termination or Service Location on the Service Order.

(o) **Service.** "Service" shall mean XO-provided telecommunications service or collocation license, as further described in the applicable Exhibit and as specifically identified on the Service Order.

(p) **Service Order.** "Service Order" shall mean an ASR or other applicable service ordering form or Collocation Schedule (as defined in the Telco Collocation Exhibit attached hereto if applicable) provided by XO and entered into by the Parties pursuant to this Agreement.

(q) **Service Outage.** "Service Outage" shall mean a disruption or degradation of On-Net Service as set forth in the applicable Exhibit.

(r) **Service Request Date.** The "Service Request Date" is the date requested by Customer for in-service as indicated on the Service Order.

(s) **Start of Service Date.** The "Start of Service Date" for a Service shall be the later of (i) the Service Request Date, (ii) the date XO notifies Customer that the Service is installed or connected, successfully tested and available for Customer use, or (iii) the date after Circuit testing and acceptance has been completed per the relevant Service Exhibit, where applicable, regardless of whether Customer agrees to accept or uses the Service. Notwithstanding the above, the Start of Service Date shall never be later than the date Customer begins to use the Service. Billing for a Service will begin on the Start of Service Date unless Customer fails to permit XO to begin testing on a Service within five (5) days of the Service Request Date, in which case billing will begin on the Service Request Date.

(t) **Tariffs.** "Tariffs" pertain to certain XO intrastate and local services, including voice and PRI services, that Customer may acquire from XO under this Agreement. When acquired by Customer, this Agreement shall be deemed to incorporate by reference the terms of each applicable Tariff, which XO may modify from time to time in accordance with law and thereby affect the Service(s) being furnished to Customer. The terms and conditions of this Agreement may supplement, but not vary, the terms and conditions contained in any XO Tariff. If any of XO's applicable Tariffs are cancelled during the term of this Agreement, such cancelled Tariff(s) will be deemed to be incorporated by reference into this Agreement on the effective

date of cancellation, as supplemented by any non-inconsistent product descriptions, definitions, prices and other terms and conditions contained in the XO Service Description and Price Guide ("Guide"). The Guide will be maintained on an XO web-site accessible by Customer, such as www.terms.xo.com, and may be modified by XO from time to time and thereby affect the previously tariffed Service furnished to Customer.

(u) **Voice Services.** "Voice Services" consist of local and long distances services, including, but not limited to, basic business lines, plain old telephone service ("POTS"); XOptions, trunk services and ISDN-PRI service, all as set forth in the applicable XO Tariffs, price lists or contracts. Voice Services do not include XO IP-based services including, but not limited to, VoIP Termination, VoIP Origination, XOptions Flex and Managed IP PBX Services.

1.2 **Services and Service Exhibits.** XO shall provide to Customer the Services Customer has specifically contracted for on a Service Order pursuant to the applicable Service Exhibit(s), attached hereto and made a part hereof. The Parties may add other Services to this Agreement by amending it to add additional Service Exhibit(s) and entering into additional Service Orders pursuant to such additional Exhibit(s). However, Customer may contract for Voice Services on a Service Order in accordance with XO's standard terms and pricing, including those set forth in any applicable Tariffs, without the incorporation of a Voice Services Exhibit hereunder.

1.3 **Interconnected Voice over Internet Protocol ("VoIP") Services.** XO does not support the provision of Interconnected VoIP Services, as defined in 47 C.F.R. §9.3, by Customer or any third party via any XO Voice Service.

1.4 **911 Calling.** Customer must ensure that no calls to a public safety answering point ("PSAP") or other emergency answering point can be made via an XO Voice Service from any location other than the particular Customer Premises at which a Voice Service is established.

1.5 **Access to Premises.** Customer agrees to cooperate with XO to accomplish Service activation by providing reasonable access to Customer's and its End Users' Premises and facilitating testing and Service delivery requirements, and Customer agrees XO shall have reasonable access to such Premises to repair, maintain or retrieve XO equipment. If the requisite access rights to all applicable buildings are not reserved to Customer, Customer shall secure any building owner or manager approval prior to such visit and shall ensure that personnel representing XO have ready access to all portions of the grounds, building and adjunct areas and facilities needed by XO to perform the installation, removal, inspection and scheduled or emergency maintenance of XO's equipment. If applicable, Customer will be responsible for ensuring that its vendors and End Users cooperate with XO or its vendors in connection with the performance by XO of its obligations with respect to the Services, including, without limitation, the installation, modification, testing,

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maintenance and operation of XO's equipment. XO shall not be liable for any damages whatsoever resulting from delays in meeting Service delivery dates requested or specified by Customer, or inability to provide Services.

ARTICLE 2 - BILLING AND PAYMENT

2.1 Except as set forth in herein, Customer shall pay the recurring and non-recurring rates and charges and the usage charges set forth herein and/or in the Service Orders beginning on the Start of Service Date without deduction, setoff or delay for any reason. Customer agrees to pay for the Services, by check sent to the address provided for herein or on the invoice or by wire transfer sent in accordance with applicable instructions provided by XO, within thirty (30) days from the date of the invoice ("Payment Period"). Restrictive endorsements or statements on checks accepted by XO will not be binding upon XO. Monthly recurring charges are billed in advance while usage and related charges are billed in arrears. The Parties shall provide one another with reasonably requested information for bill validation including, but not limited to, the number of Circuits and charges for each Service.

2.2 The Customer is not obligated to pay, and will withhold from payment, any amounts the Customer has in dispute with the XO based on XO'S non-performance or negligent performance of any of the Services under this Contract. Customer agrees to notify XO in writing, providing the billing identification, Circuit number, any trouble ticket number and an explanation for the dispute. XO reserves the right to suspend or terminate service if payments are withheld or withheld for sixty or more days without resolution to the dispute which resulted in Customer's withholding payment. No charges may be disputed more than sixty (60) days after the date such charges are invoiced, and if not disputed within that time, all such charges shall be deemed valid and undisputed by Customer. Payment shall not prejudice Customer's right to dispute charges, so long as they are disputed in good faith in the manner and within the timeframes specified in this Section. The Parties will cooperate in good faith to resolve any such disputes within a thirty (30) day period after the dispute is submitted to XO.

2.3 If Customer does not make payment of all invoiced charges in accordance with the provisions herein within the Payment Period, XO may suspend any and all Service provided by XO under this Agreement and/or any other service agreement after XO has given Customer written notice. Following suspension of Services for non-payment, XO is not required to reinstate Services to Customer until Customer has paid in full all charges then due. If Customer fails to timely cure the non-payment within the timeframe specified by XO, Customer will be deemed to have terminated the affected Services as of the effective date of Service suspension. If Customer has not paid an invoice within the Payment Period and XO owes any amounts to Customer, XO may offset respective payments by first applying such amounts owed by XO to the full balance due from Customer and the remaining amounts owed by XO, if any, will be remitted in the normal course of business.

2.4 When Service is initiated on a day other than the first day of the month or terminates on a day other than the last day of the month, any monthly recurring charges for that month shall be prorated accordingly.

ARTICLE 3 - TAXES

3.1 The rates, pricing and charges for Services set forth herein or in the any Service Order do not include applicable taxes and surcharges. XO acknowledges Customer is a governmental entity and, as such, is tax exempt.

ARTICLE 4 - TERM AND RENEWAL OPTIONS

4.1 The term of this Agreement shall commence on the Effective Date of this Agreement, and shall terminate five (5) years thereafter. Thereafter, this Agreement shall be renewed in writing by all parties to this agreement. If Customer wishes to terminate a Service or Circuit(s) for any reason, or not to renew such Service or Circuit(s), Customer shall provide XO with written notice ("Termination Notice") addressed to XO at such location as XO shall specify from time to time. Such Termination Notice must specify all necessary identifying details about the Service or Circuit being terminated (e.g., Circuit Identification number, the A and Z locations of such Circuit) and the requested effective date of such termination (which date must not be less than thirty (30) days from the date notice is received by XO). Termination of Service/Circuit(s) by any form of communications or means other than as provided above shall not be effective and Customer shall remain obligated to XO for all Services/Circuit(s) rendered. For the avoidance of doubt, Customer may be liable for cancellation charges upon termination of Service/Circuit(s) as further provided in the applicable Service Exhibit attached hereto.

ARTICLE 5-INSURANCE

Parties acknowledge that Shelby County Government is a governmental agency and is therefore self-insured.

ARTICLE 6. -- WARRANTIES AND NETWORK STANDARDS

6.1 All services by XO will be performed in a manner satisfactory to the County, and in accordance with the generally accepted business practices and procedures of the County.

6.2 Each Party represents and warrants to the other Party that it is an entity, duly organized, validly existing and in good standing under the laws of the place of its origin, with all requisite power and authority to enter into and perform its obligations under this Agreement in accordance with its terms.

6.3 XO represents and warrants to Customer that all On-Net Service rendered by it hereunder shall be designed, produced, installed, furnished and in all respects provided and maintained in conformance

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and compliance with applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over the subject matter of this Agreement.

6.4 The warranties and remedies set forth in this Agreement constitute the only warranties and exclusive remedies with respect to this Agreement. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, NON-INTERFERENCE AND NON-INFRINGEMENT.

ARTICLE 7 – DEFAULT

7.1 A Party shall be deemed in “Default” of this Agreement upon the occurrence of any one or more of the following events:

(i) a Party violates any applicable laws, statutes, ordinances, codes or other legal requirements with respect to the Services and such violation(s) are not remedied within thirty (30) days after written notice thereof; or

(ii) a Party fails to perform any of its material obligations under this Agreement and such nonperformance is not remedied within thirty (30) days after notice thereof or such other cure period as may be specified in the applicable Service Level Agreement (attachment B) except for payment defaults, for which no cure periods in addition to those described in any section herein shall be available; provided, however, if Customer is entitled to outage credits pursuant to the applicable SLA attached hereto or other remedies set out in this Agreement for such nonperformance by XO. Customer reserves the right to terminate the service due to non-performance if the issue is not remedied to the Customer's satisfaction.

7.2 In addition to all remedies available at law or in equity, the non-defaulting Party hereunder may terminate this Agreement, including, for the avoidance of doubt, its Exhibits, and/or related Service Orders, in whole or in part, upon the occurrence of a Default. A payment default that results in termination of this Agreement shall entitle XO to collect from Customer payment for services already rendered under this agreement. However, under no circumstances will Customer be liable for early termination fees or any other penalty charges.

Article 8 – Termination or Abandonment

8.1 It shall be cause for the immediate termination of this Contract if, after its execution, the County determines that either: (i) the XO any of its principals, partners or corporate officers, including the corporation itself, has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting. (ii) XO has subcontracted, assigned, delegated, or transferred its rights,

obligations or interests under this Contract without the County's consent or approval. (iii) XO has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of Provider's assets.

8.2 The County may terminate the Contract upon five (5) days written notice by the County or its authorized agent to the XO for Provider's failure to provide the services specified under this Contract.

8.3 This Contract may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination. In the event of such termination, XO shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date; earned as of the date of termination.

8.4 All work accomplished by XO prior to the date of such termination shall be recorded and tangible work documents shall be transferred to and become the sole property of the County prior to payment for services rendered however, XO shall not be reimbursed for any anticipatory profits that have not been earned as of the date of the Termination Date. All Services completed by CONSULTANT prior to the Termination Date shall be documented and tangible work documents shall be transferred to and become the sole property of the COUNTY prior to payment for the Services rendered.

8.5 Notwithstanding the above, the XO shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract by XO and the County may withhold any payments to XO for the purpose of setoff until such time as the exact amount of damages due the County from XO is determined

8.6 The COUNTY has the option to cancel the Agreement and/or any Renewals if the County is put on notice of legal problems with CONSULTANT or any of its principals, partners, corporate officers, or agents, involving allegations of dishonesty, improper business conduct, or criminal activity. Cancellation under this provision shall be immediate and effective upon notice. The COUNTY reserves the right to exercise this provision at its discretion and any decision rendered by the COUNTY under this provision constitutes a final determination of the matter the public welfare requiring it.

ARTICLE 9 - CONFIDENTIAL INFORMATION

9.1 Notwithstanding anything to the contrary contained herein or within any other document supplied to County by the Provider, XO understands and acknowledges that County is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to County by XO due to services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee and Shelby County..

ARTICLE 10 - INDEMNIFICATION

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10.1 XO's Indemnification of Customer. XO shall indemnify, defend, save and hold harmless the County, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Contract or in the performance of the duties hereunder, whether performed by the XO its sub-providers, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.

10.2 XO expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the XO shall in no way limit the responsibility to indemnify, defend, save and hold harmless the County or its elected officials, officers, employees agents, assigns, and instrumentalities as herein provided.

10.3 The County has no obligation to provide legal counsel or defense to XO or its sub-providers in the event that a suit, claim or action of any character is brought by any person not party to this Contract against XO as a result of or relating to obligations under this Contract.

10.4 Except as expressly provided herein, the County has no obligation for the payment of any judgment or the settlement of any claims against the XO as a result of or relating to made or filed against XO or its sub-providers regarding any matter resulting from or relating to XO's obligations under this Contract and will cooperate, assist and consult with the County in the defense or investigation thereof.

10.3 Intellectual Property: If a Service provided by XO becomes, or if XO reasonably believes a Service it is providing may become, the subject of a suit, proceeding or other claim by an entity (not a party to or an Affiliate of a party to this Agreement) that the Service directly infringes the U.S. patent, trademark or copyright rights ("Intellectual Property") of such entity, XO shall, at its own expense and option: (a) procure the right for XO to continue to provide the Service; (b) modify or replace the Service with a different service that has substantially similar functionality; or (c) discontinue providing or direct the cessation of any use of the Service and refund to Customer a pro-rated portion of any charges paid for the affected Service through the date of Service discontinuation or cessation. Notwithstanding the foregoing, XO will have no obligation to defend or indemnify Customer for any suit, proceeding or claim arising out of Customer's: (a) designs, specifications, modifications, or configurations; (b) combination of Customer hardware or software, or other materials, services or methods with the Service; or (c) use, operation or resale of the Service in contravention of its obligations and responsibilities.

10.4 Procedure: If an entity makes a claim against XO or Customer, the Party in receipt of such claim, each party to the agreement will promptly notify the other Party in writing no later than sixty (60) days after receipt of such notification of a potential claim. All parties agree to provide the assistance, information and authority necessary to assist the other in its legal obligations. Neither XO nor Customer may settle any such matter without the consent of the other as to any settlement that imposes an obligation on, or requires any admission by, the other Party. Additionally, if the Service as and in the manner provided by XO is determined by a court of competent jurisdiction to have directly infringed an entity's Intellectual Property rights, or if such claim is settled, XO shall indemnify Customer for its reasonable legal fees incurred to defend itself against such claim up to and including the time of final disposition or settlement of such claim and any payment required to be made by Customer pursuant to such judgment or settlement.

10.5 These Customer and XO indemnifications will survive this Agreement.

ARTICLE 11 - LIMITATION OF LIABILITY

11.1 Neither Party shall be liable to the other Party for any indirect, consequential, special, incidental, reliance, or punitive damages of any kind or nature whatsoever including, without limitation, any lost profits, lost revenues, lost savings, or any other business loss including goodwill, loss of use of property, loss of data, cost of substitute performance equipment or services, downtime costs and claims of customer for damages, or harm to business, regardless of the foreseeability thereof and regardless of whether damages are caused by the willful misconduct, negligent act or omission, or wrongful act arising from or related to this Agreement. For purposes of this Agreement, a Party's out-of-pocket costs for damages of the kinds

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specified in the preceding sentence which are recovered from such Party by a third party shall be deemed to be indirect damages to such Party and each Party hereby releases the other Party, its subsidiaries and affiliates, and their respective officers, directors, managers, employees, and agents, from damages from such claim(s), except to the extent such damages are part of claims for which indemnification is due herein this Agreement. **THE ENTIRE LIABILITY OF XO AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR CLAIMS ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT SHALL BE LIMITED TO THE LESSER OF DIRECT DAMAGES OR THE TOTAL AMOUNT PAID BY THE CUSTOMER TO XO DURING THE PREVIOUS THREE (3) MONTHS FOR THE SERVICE(S).** The foregoing limitations apply to all causes of action and claims of any kind arising out of or related to this Agreement including any Exhibit and any Service Order, including, without limitation, breach of contract, breach of warranty, strict liability, negligence, misrepresentation, or any other tort. Customer acknowledges and accepts the reasonableness of the disclaimers and limitations of liability set forth herein.

ARTICLE 12 - REGULATIONS

12.1 The rates set forth in this Agreement are subject to the imposition of new regulation, modification of existing regulation, new interpretation, application or enforcement of, or exercise of authority related to, any regulation or finding of any federal, state, and/or local regulatory agency, legislative body, or court of competent jurisdiction, including, without limitation, the imposition of any charges, surcharges, and/or taxes in reliance or as a result of the same (collectively, "Regulatory Activity"). XO reserves the right, at any time, (i) to pass through to Customer all, or a portion of, any charges, surcharges, or taxes directly or indirectly related to such Regulatory Activity; and/or (ii) modify the rates and/or other terms and conditions of this Agreement to reflect the impact of such Regulatory Activity, including, without limitation, the impact of any actions by third parties in connection with such Regulatory Activity. All parties acknowledge that Shelby County Government is a governmental entity and, therefore, is tax exempt. XO agrees to not pass any taxes to Shelby County Government which Shelby County Government would not otherwise be subject to pay.

12.2 Customer represents and warrants that all traffic being delivered by Customer or its End Users or agents to XO for local termination, and all traffic that XO delivers to Customer or its End Users or agents that has originated in the same local calling area in which Customer's NPA-NXX is assigned and/or in which such traffic is terminated to Customer or its End Users or agents, is local traffic or is legally entitled to be treated as local traffic under all applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over such traffic. Customer understands that XO will rely upon such representation to assign local telephone numbers to Customer and/or route Customer's traffic for termination as local calling. Customer represents and warrants that

Customer has paid, or shall promptly pay to XO all switched access charges associated with any of Customer's traffic that is delivered pursuant to this Agreement. Customer also represents and warrants that neither it nor any of its end users or agents will remove or in any way alter Automatic Number Identification ("ANI") or Calling Party Number ("CPN") information associated with any traffic delivered pursuant to this Agreement. Customer agrees to cooperate with XO to obtain or verify any necessary regulatory certification or information regarding the nature of its traffic and/or use of facilities.

12.3 Customer shall promptly pay to XO all access charges, reciprocal compensation, and/or any other charges, surcharges and/or taxes billed to XO by a third party, or remitted by XO to a third party, that are associated with any of Customer's traffic delivered or facilities utilized pursuant to this Agreement, including but not limited to any retroactive charges, (collectively, "Additional Charges") and that are not already reflected in the rates charged by XO for the Services rendered pursuant to this Agreement. All parties acknowledge that Shelby County Government is a governmental entity and, therefore, is tax exempt. XO agrees to not pass any taxes to Shelby County Government which Shelby County Government would not otherwise be subject to pay. Although XO shall not have any obligation to challenge any Additional Charges levied by a third party, if XO successfully challenges imposition of any Additional Charges by a third party, it will refund to Customer any Additional Charges previously paid by Customer to XO that were subject to such successful challenge. In addition, XO shall have the right, upon five (5) days written notice to Customer, to revise its rates for Services provided to Customer to reflect any Additional Charges. Within thirty (30) days of receipt of written notice of any such rate increase to reflect Additional Charges, Customer, upon giving written notice to XO, may elect to transition any Services affected by such rate increase to another carrier over a period of time not to exceed sixty (60) days. Notwithstanding any other provision of this Agreement, if, within the designated thirty (30) day period, Customer does not provide written notice to XO of its election to transition the affected Services to another carrier, Customer shall be deemed to have waived its right to such election. Even if Customer elects to transition the affected Services to another carrier, Customer shall still be responsible for paying any and all Additional Charges billed to or remitted by XO up to and including the final transition date. The parties agree to cooperate on the scheduling of any such transition.

12.4 Customer agrees that, if XO is subjected to a third party audit relating to Customer's traffic or use of facilities which is the subject of this Agreement, Customer will cooperate in any such audit. Customer further agrees that it will protect, defend, indemnify and hold harmless XO, its subsidiaries, affiliates, officers, directors and employees from any and all costs resulting from such third party action.

ARTICLE 13 - FORCE MAJEURE

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13.1 In no event shall a Party have any claim or right against the other Party for any failure of performance due to causes beyond its control, including but not limited to: acts of God, fire, explosion, vandalism, cable or fiber cut, adverse weather conditions, flood or other similar occurrences; any law, order regulation, direction, action or request of the government, including federal, state and local governments having or claiming jurisdiction over XO or of any department, agency, commission, bureau, corporation, or other instrumentality of any federal, state, or local government, or of any civil or military authority; national emergencies; unavailability of materials or rights-of-way; insurrections; riots, wars or terrorism; strikes, lock-outs, work stoppages, or other labor difficulties, supplier failures, shortages, breaches or delays; or any other cause or circumstance, whether of a similar or dissimilar nature to the foregoing, beyond the reasonable control of the affected Party.

ARTICLE 14 - DISPUTE RESOLUTION

14.1 This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, the CONSULTANT agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

ARTICLE 15 – ASSIGNABILITY

15.1 The parties may not assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any such assignment without prior written consent of the party shall be void. Notwithstanding the foregoing, if this Agreement is assigned by Customer to any other party, by assignment, operation of law or otherwise, which Party, prior to the assignment, has an agreement (the "Prior Agreement") with XO or any of its Affiliates for the provision of services, the services being provided shall continue to be governed by the Prior Agreement, and the Services provided hereunder shall continue to be governed by this Agreement, each without reference to the other. . The County shall not be responsible for the fulfillment of the Provider's obligations to its transferors or sub providers. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the assignment.

ARTICLE 16-CONFLICT OF INTEREST.

XO covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of its services. XO warrants that no part of the total contract amount provided herein shall be paid directly

or indirectly to any officer or employee of the County as wages, compensation, or gifts in exchange for acting as officer, agent, employee, sub-contractor to XO in connection with any work contemplated or performed relative to this Contract.

ARTICLE _17-COVENANT AGAINST CONTINGENT FEES

XO warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Provider, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for XO any fee, commission, percentage brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 18- EMPLOYMENT OF COUNTY WORKERS.

XO will not engage, on a full or part-time, or other basis during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of the Contract in the employ of the County.

ARTICLE 19-SUBJECT TO FUNDING

This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the term hereof, then this Contract will be terminated. In the event of such termination, XO shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date.

ARTICLE _20 –NO WAIVER OF CONTRACTUAL RIGHT.

No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

.ARTICLE 21-INCORPORATION OF OTHER DOCUMENTS. (a) XO shall provide services pursuant to this Contract in accordance with

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the terms and conditions set forth within the Shelby County Request for the Shelby County Purchasing Department and incorporated herein by reference(b) It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties.

ARTICLE 22 - CONTRACTING WITH LOCALLY OWNED SMALL BUSINESSES.

XO shall take affirmative action to utilized Locally Owned Small Businesses when possible as sources of supplies, equipment, construction and services

ARTICLE 23 - PROVIDERS PERSONNEL.

XO certifies that it presently has adequate qualified personnel to perform all services required under this Contract. All work under this Contract will be supervised by the provider. XO further certifies that all of its employees assigned to serve the County have such knowledge and experience as required to perform the duties assigned to them. Any employee of XO who, in the opinion of the County, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with services under this Contract.

ARTICLE 24 - NOTICES

24.1 Notices under this Agreement shall be in writing and delivered by overnight courier (e.g., Federal Express, DHL) or certified mail, return receipt requested, to the persons whose names and business addresses appear below and such notice shall be effective on the date of receipt by the receiving Party:

If to XO: XO Communications Services, Inc.
11111 Sunset Hills Road
Reston, VA 20190
Attn: President, Business Services

With copy to: XO Communications Services, Inc.
11111 Sunset Hills Road
Reston, VA 20190
Attn: Vice President, Assistant General Counsel

If to Customer: Shelby County Government information Technology
160 North Main Street
Memphis, TN 38103
Attn: Mike Pachis

And:

Shelby County Government
160 North Main Street, Suite 500
Memphis, TN 38103
Attn: Contracts Administration

A Party may change its address and point of contact by notifying the other Party in accordance with this Article.

ARTICLE 25 - MISCELLANEOUS

25.1 In the event of any express inconsistency, and only to the extent of such inconsistency, between the main body of this Agreement and any –Exhibits or Service Orders made a part of in accordance with this Agreement, precedence shall be given to:

- (1) The main body of this Agreement
- (2) The Exhibits; and
- (3) Any Service Orders

26.2 XO's telecommunications equipment shall remain the sole and exclusive property of XO or its assignee, and nothing contained herein shall give or convey to Customer any right, title or interest whatsoever in such equipment, which shall at all times be and remain personal property notwithstanding that it may be or become attached to or embedded in realty. Customer shall not tamper with, remove or conceal any identifying plates, tags or labels affixed to the equipment showing XO's ownership thereof. XO may substitute, change or rearrange telecommunications equipment used in providing Service as long as the quality is not impaired.

26.3 Independent Status (a) Nothing in this Contract shall be deemed to represent that the provider, or any of the provider's employees or agents, are the agents, representatives, or employees of the County. The XO will be an independent contractor over the details and means for performing its obligations under this Contract. Anything in this Contract which may appear to give County the right to direct the XO as to the details of the performance of its obligations under this Contract or to exercise a measure of control over XO is solely for purposes of compliance with local, state and federal regulations and means that the XO will follow the desires of the County only as to the intended results of the scope of this Contract. (b) It is further expressly agreed and understood by XO that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the County; that the XO has been retained by the County to perform the services specified herein (not hired) and that the remuneration specified herein is considered fees for services performed (not wages) and that invoices submitted to the County by XO for services performed shall be on the XO's letterhead.

16.4 No waiver of any of the provisions of this Agreement shall be binding unless it is in writing and signed by both Parties. The failure of either Party to insist on the strict enforcement of any provision of this

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Agreement shall not constitute a waiver of any provision and all terms shall remain in full force and effect.

16.5 No subsequent agreement among the Parties concerning the Service shall be effective or binding unless it is made in writing and executed by authorized representatives of the Parties. Neither electronic mail nor instant messaging (IM) shall be considered a "writing" sufficient to change, modify, extend or otherwise affect the terms of the Agreement.

26.6 This Agreement, together with any applicable Tariffs, sets forth the entire understanding of the Parties and supersedes any and all prior or contemporaneous agreements, arrangements or understandings relating to the subject matter hereof., written, oral or otherwise The referred to herein are integral parts hereof and are hereby made a part of this Agreement.

26.7 If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement.

26.8 This Agreement for Service is made pursuant to and shall be construed and enforced in accordance with the laws of the State of Tennessee without regard to its choice of law principles. Any action arising out of or related to this Agreement shall be brought in the state courts located in Shelby County, Tennessee, and Customer consents to the exclusive jurisdiction and venue of such courts.

26.9 This Agreement is non-exclusive. Nothing in this Agreement shall prevent Customer or XO from entering into similar arrangements with, or otherwise providing Services to, any other person or entity.

26.10 Neither Party shall issue a news release, public announcement, advertisement, or other form of publicity concerning the existence of this Agreement or the supplies or Services to be provided hereunder without obtaining the prior written approval of the other Party; except that XO reserves the right to issue a public announcement and/or press release regarding the existence of this Agreement and the provision of Service(s) by XO to Customer hereunder within six (6) months after the Effective Date of this Agreement. The content of such announcement and/or release shall be subject to Customer's prior review and written approval. Any request by Customer for such consent from XO shall be directed to XO's Legal and Corporate Communications Departments.

26.11 The terms and provisions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties shall survive the completion of performance and termination of this Agreement, including, without limitation, the making of any and all payments hereunder.

26.12 Any additional services provided by XO to Customer not included in a Service Order shall be governed by the terms of this Agreement and priced in accordance with XO's standard pricing as set forth in its applicable Tariffs, price lists or Guide.

26.13 This Agreement shall be of no force and effect and the offer contained herein shall be withdrawn unless this Agreement is executed by Customer and delivered to XO on or before _____, 200_.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

SHELBY COUNTY GOVERNMENT

BY: _____

AUTHORIZED SIGNATURE DATE

PRINT NAME

PRINT TITLE

XO Communications Services, Inc., on behalf of itself and its operating affiliates

BY: _____

AUTHORIZED SIGNATURE DATE

PRINT NAME

PRINT TITLE

List of Attachments and Exhibits

Exhibit A. Pre Approved ASR
Exhibit B. XO's SL:A Information
Exhibit C. Service Order Agreement
Addendum D. XO Pricing information

XO Sales Contact: _____

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MSA Prepared By: _____

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